PUBLIC REPORT NO. 25

PUBLIC SERVICES FOR ADULT DEPENDENT PERSONS

MARCH, 1991

Ombudsman
Fairness for all in British Columbia

OMBUDSMAN

Legislative Assembly
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In February, 1990, the Office of the Ombudsman received complaints from a variety of sources about the treatment an adult dependent person received in a day program funded by the provincial government. The concerns arose as a result of staff members of the program rubbing laundry soap across the mouth of the client. The complainants were dissatisfied with the response that they had received from both the program operators and the Ministry of Social Services and Housing (the funding agency). When our office became involved, the client had been removed from the program, but other individuals remained as did the staff who were allegedly involved in the incident. For this reason the complaint was viewed as urgent and we investigated and reported our interim concerns to the Ministry within three days.

As well, the police began a lengthy criminal investigation. Crown Counsel exercised its discretion to divert the cases outside the criminal justice system, after the two individuals involved acknowledged responsibility for the offence.

Immediately after our interim report to the Ministry of Social Services and Housing, the Ministry removed its clients from the program. Clients were placed in alternate settings for day programs and so the immediate problems of this individual incident were resolved. This case however was one of a series of investigations which raised many other issues regarding the government's responsibility for and practices in delivering services to dependent adults and those general questions have been under review for the past year.

By adult dependent persons we mean those adults whose physical or mental functioning is impaired to the point where safe daily living requires the provision of services.

The impairment may be permanent or temporary, it may be purely physical or may be more complicated, and an individual client may have a range of capacities in different functional areas. However, in all cases the result is some real reliance on others for support and care.

Where care is delivered by a public employee, or in a public institution it is clear that this is a public service and that government has assumed the duty of care. By "duty of care" we do not mean that the government is responsible for these adults, or should make decisions on their behalf, but that the government is responsible for the quality and effectiveness of the services the adult receives. Many dependent adults, however, live with family members and in small facilities operated by individual, corporate or non-profit interests. In the community these adults receive a wide variety of these public services; the distinction is that rather than providing a direct service the government often purchases or otherwise underwrites the service. From the perspective of the Ombudsman's Office, the ultimate duty of care remains with government.

These community services have increased, particularly in response to the decade of deinstitutionalization of clients with both mental health difficulties and developmental delays. Agencies which previously did not deal with this population are now having to assess the delivery of their programs to this client group. For example, the Coroner's Office, Corrections Branch and the Criminal Justice Division, the Forensic Psychiatric Services and the Mental Health Branch will be required to assess their services and delivery systems as their contact with these individuals increase. We understand this is underway with the British Columbia Mental Health Society currently developing a project to create community-based expertise for those who are providing mental health services to clients with a mental handicap. The time has come for an assessment of the impact of that change in delivery method on the government's process for ensuring effective and integrated service delivery.

Presently, though the government has the legal authority to pay for adult services there is no legislative framework for many of the day-to-day decisions in the lives of these adults. Except for those few persons for whom an individual or the Public Trustee has been granted committeeship of the person (the right to make decisions on the adult's behalf) there is no clear authority for government staff assisting adults and their families. Such simple matters as the consent needed for dental treatment under general anaesthetic are not simple for this group.

The question of what legislation is needed is under review in the community and by government. The Project to Review Adult Guardianship, is a group of adults, families, advocates and providers working to define and present their recommendations to government. The Public Trustee is chairing the Inter-Ministerial Committee on Issues Affecting Dependent Adults. This committee will be reviewing and making recommendations on policy, program and legislative initiatives and dealing with issues of abuse, substitute decision-making and guardianship. We have been advised that the Ministry of Health's Mental Health Services Division has developed policy and procedures for dealing with residential services, clinical services and rehabilitation services for clients in the mental health system. The Ministry has suggested that the development of these standards may serve as a reference point for further work. In addition, the Ministries of Social Services and Housing and Health have advised us of their " Planning for the Future", a document outlining the development and implementation of services to adults with developmental handicaps.

At present, however, these plans do not provide for enhanced services to all other dependent adults. Similarly, while the Inter-Ministerial Committee may result in clarification of the legal rights and duties of both dependent adults and government, it is still necessary to clarify current services and develop fair and reasonable administrative practice in the delivery models.

We believe there are other important areas in which service levels, delivery and quality need further attention. The areas are:

1. The government's role when purchasing, rather than directly delivering the service.

In this option for service delivery the government buys or underwrites the cost of services. The service may be a residential setting such as a group home or a care facility, or it may be a professional service delivered by a nurse, psychologist, etc. in private practice. The service provider may be an individual, a business or non-profit society but in all cases the client's day-to-day relationship is with someone other than a government employee.

This process raises several questions. When using the services of a contractor or provider, how can and does the government adequately specify the services and levels of care to be purchased? Do government staff have a clear understanding of their role and authority in monitoring these purchased services? Can the various government

agencies involved agree on consistent guidelines for service providers on such questions as staff skill levels, salaries or fees, training and supervision, required to serve this client group, and on measures of care against which providers' services will be evaluated?

The Ministries of Health and Social Services and Housing have responded to some of these questions, in respect to services to adult clients with mental handicaps. We have been assured that contracts with providers will be specific about care expectation, and the distribution of the standards recently developed for residential care will ensure that providers understand the government's expectations. Policy manuals and directives set out the Ministry's expectations that staff monitor these new standards, but in practice line staff tell us of their confusion and uncertainty in this new role.

As yet there is no consensus on the core skills necessary to provide service to this challenging client group. The Ministry of Social Services and Housing has assured us of its commitment to the development of such a standard. We support this commitment and plan to monitor the development of the standard.

2. The balancing of actual or potentially competing interests.

When services are provided to dependent adults in the community there are at least four interests at issue: the client has wishes and needs; the client's family and friends may or may not share those needs; the service provider has its own corporate entity and interest; and the government funding agency is committed to serving its clients but at the most reasonable cost. Other arms of government may also be involved, for instance in those facilities where municipal and provincial licenses are required, where the WCB imposes restrictions on work conditions and so on.

The balancing of these various interests raises questions affecting the delivery of services to the adult dependent client, especially when reviewing and investigating a "critical incident", the phrase used to describe an unusual and perhaps hazardous event in a client's life. What are the respective roles of the staff in the contracting or funding Ministry and in the licensing Ministry when reviewing an allegation or critical incident which may constitute cause to cancel or amend a service delivery contract? What provision can be made to give fair process to the care provider while ensuring the well-being of clients who continue to need or to use the provider's service during an investigation? For those services

licensed by the Provincial Adult Care Facilities Licensing Board (PACFLB) any decision to close a facility or restrict a service's licence may be appealed, but does this provide an adequate review? The Ministry of Health's Community Care Facility Amendment Act (Bill 43) when implemented will permit individuals affected by a decision regarding exemptions from licensing requirements, to appeal where health or safety may be at issue. What of the interests of clients and family who may not have an appeal to the PACFLB, or of all parties if the facility delivering the service is not required to be licensed? Is it appropriate that day programs, at which clients may spend as much as seven hours, not be subject to licensing requirements? What protocols are necessary where the critical incident information infers assault or other criminal behaviour such as in the case we reviewed in February, 1990?

For those clients with mental handicaps we have been assured that the government considers the client's best interest to be paramount in balancing these interests. As far as possible, care providers' rights to administrative fairness will be protected. Providers and clients' families will be advised of the existence of critical incident reviews, and of the possible effects on their interests, such as cancelling a contract and moving clients to different care providers. Those without a formal appeal mechanism may access a review through the Ministry of Social Services and Housing's administrative review structure, or through our office. The question of broadening the scope of licensing to include day programs for adults is under review, and the Ministry of Social Services and Housing plan to develop standards of service for those day programs with which it has a formal contractual relationship. We are told that staff are aware of their responsibility to notify the Public Trustee of any situations where the Ministry is in disagreement with an adult, a provider, or an adult's family about a significant decision. Unless the Public Trustee acts to assume committeeship, this notification will not guarantee conflict-resolution. We are told that staff are aware of their obligation to report to the police information inferring criminal activities against clients.

We do not dispute these commitments, but remain concerned by the lack of clarity for both government and non-government line staff involved in such matters. The case we reviewed in February, 1990 highlighted the potential for incomplete response to a critical incident, amounting to criminal behaviour, which occurred in an unlicensed facility where the operator was in breach of local fire and safety standards and operating without a business licence. Other cases coming to our attention have involved behaviour of a non-criminal nature, amounting to misuse of the client's

trust or the provider's position.

We encourage the government to develop inter-ministry and inter-agency protocols in the area, as has happened with children. We understand that there is an Inter-Ministry Committee developing protocols for dealing with elder abuse, which may serve as a model. We believe that an adult equivalent of the Child Abuse Handbook would provide certainty of process and certainty of expectations to all the parties dealing in this difficult area. We intend to continue to pursue this issue with the Ministries involved.

3. Special Skills

The variety and range of impairments in the clients who may be grouped as "dependent adults" is large. This office does not have the expertise to analyze and classify these needs, but it is clear that government staff responsible for ensuring service delivery must be able both to assess needs, and assess the effectiveness of services. Often the clients themselves are the logical best source for this information, but communication and developmental delays preclude easy and certain communication. Certainty of communication is essential when reviewing critical incidents; this raises the question of whether the government can develop a list of persons expert in both investigation and specific communication skills, to respond to individual situations throughout the province.

Expert services are already available to support line staff. Contracts exist with psychologists and other professionals, to provide individual assessment and case planning for clients. Other units such as the Ministry of Social Services and Housing's Provincial Review Team provide periodic expert evaluation of the functioning of programs purchased for persons being relocated from Tranquille, Glendale and Woodlands as part of the deinstitutionalization project. It is planned that the Ministry of Health will facilitate the access of this client group to necessary medical services. We remain concerned, however, that there be immediate and expert assistance to review critical incident information, not dependent on the locale or the skills existing in the area. The Ministry of Health's Community Care Facilities Branch is reviewing this question, and we will continue to monitor the outcome. The availability of such specialists, or a Critical Incident Response Team, and clear protocols for the roles of each agency responding to an incident do not replace the need for skilled, government line staff. This client group can be challenging; some have minimal or no verbal skills and many line staff have little or no training in alternative communication. Just as important is the lack of training

for line staff in their role as contract monitor or evaluator. Staff with high competence in social work may have little or no understanding of this new role and have received only minimal instructions. Adequate training must be provided.

The issue of contract monitoring, previously mentioned, crosses the boundaries of all Ministries. We were pleased to learn of the Ministries' initiatives regarding contract preparation and monitoring. In addition, the Task Force on Contract Management has made recommendations regarding assessing the training needs for government staff employed in managing and evaluating contracted services. We plan to remain in consultation with this group, and have already expressed to it our support for the concept of a Contract Management Council to monitor the development of government's role in contracting services.

Stephen Owen
Ombudsman